

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:)
COREY JO WILLOUGHBY,) Bankruptcy Case No. 03-90816
Debtor.)

OPINION

This matter having come before the Court on Trustee's Objection to Debtor Amended Exemptions filed on September 11, 2003; the Court, having heard arguments of counsel and being otherwise advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On January 29, 2003, the Debtor and his former wife received a Judgment For Dissolution of Marriage. As part of that Judgment, the Debtor was to receive the sum of \$15,000 for his share of the equity in the marital residence in exchange for his agreement to convey his interest in the real estate to his former wife.

2. On March 10, 2003, the Debtor filed for relief under Chapter 7 of the Bankruptcy Code. At the time of his filing, the Debtor had not yet received the \$15,000 representing his interest in the marital residence under the Judgment For Dissolution of Marriage, due to the fact that his former wife had not yet been able to obtain financing to make the payment.

3. On August 25, 2003, in contemplation of receipt of the \$15,000, pursuant to the parties' Judgment For Dissolution of Marriage, the Debtor filed an Amended Schedule C in which he claimed as exempt a "Divorce Settlement" with a value of \$15,000 with a

claimed exemption amount of \$7,500 pursuant to 735 ILCS 5/12-901. This August 25 amendment was further revised by a Revised Amended Schedule C filed on September 12, 2003, in which the Debtor specifically claimed as exempt "Proceeds From Homestead Equity resulting from Divorce (8607 Ill HwY 16, Paris)."

4. On September 11, 2003, the Trustee in Bankruptcy filed Trustee's Objection to Debtor Amended Exemptions, stating:

The Debtor can not claim a homestead exemption in the property sold by his ex-wife, because he did not occupy that property at the time he filed his original bankruptcy petition.

5. The \$15,000 in funds received by the Debtor were paid in the Office of the Chapter 7 Trustee, where they will remain pending resolution of this matter. The Debtor claims a \$7,500 exemption in these funds.

Conclusions of Law

The Debtor has claimed a \$7,500 exemption in the proceeds of his sale of his marital residence. This exemption is made pursuant to 735 ILCS 5/12-901. This exemption should have more properly been claimed under 735 ILCS 5/12-906. However, this error is not fatal. See: In re Walston, 190 B.R. 855 (Bankr. S.D. Ill. 1996). The Illinois Statute provides that a homestead exemption will continue for one year and proceeds from the sale of debtor's homestead should not be viewed as a separate exemption, but is rather a continuation or extension of the general Illinois Homestead Exemption. See: In re Ziegler, 239 B.R. 375 (Bankr. C.D. Ill. 1999).

Under 735 ILCS 5/12-906, concerning proceeds of sale of a homestead interest, it is stated:

When a homestead is conveyed by the owner thereof, such conveyance shall not subject the premises to any lien or incumbrance to which it would not be subject in the possession of such owner; and the proceeds thereof, to the extent of the amount of \$7,500, shall be exempt from judgment or other process, for one year after the receipt thereof, by the person entitled to the exemption, and if reinvested in a homestead the same shall be entitled to the same exemption as the original homestead.

Under the undisputed facts of this case, the Court concludes that, on January 29, 2003, prior to his filing for relief under Chapter 7 of the Bankruptcy Code, the Debtor had agreed, and was obligated to, convey his interest in his homestead to his former wife for the sum of \$15,000. At the point when the Judgment For Dissolution of Marriage was entered on January 29, 2003, the Debtor obtained exemption rights under 735 ILCS 5/12-906, in the \$15,000 proceeds. The fact that it took some time for the proceeds to be received does not bear on the decision in this matter. The delay in receiving the proceeds was of no fault of the Debtor, and did not change the rights the Debtor had in the proceeds at the time of his filing for Chapter 7 relief. See: In re Wagenbach, 232 B.R. 112 (Bankr. C.D. Ill. 1999).

In conclusion, the Court finds that, pursuant to 735 ILCS 5/12-906, the Debtor has a valid claim of exemption in the amount of \$7,500, in the funds currently held by the Chapter 7 Trustee. There has been no showing that the Debtor had any intent to abandon his homestead interest, but, rather, that he conveyed said interest to his former wife. There is no dispute that the Debtor intends to reinvest these funds into a new home.

ENTERED: December 2, 2003.

GERALD D. FINES
Chief United States Bankruptcy Judge

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ORDER

For the reasons set forth in an Opinion entered on the 2nd day of December 2003;

IT IS HEREBY ORDERED that:

A. Trustee's Objection to Debtor Amended Exemptions, filed by the Chapter 7 Trustee, on September 11, 2003, is DENIED; and,

B. Debtor shall be allowed an exemption in the amount of \$7,500 in funds currently in the possession of the Chapter 7 Trustee.

ENTERED: December 2, 2003.

GERALD D. FINES
Chief United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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DATED: December 2, 2003.

Deputy Clerk